

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.8.801, 17.8.818,)	PROPOSED AMENDMENT AND
17.8.819, 17.8.827, 17.8.901,)	ADOPTION
17.8.904, 17.8.905, 17.8.906,)	
and the adoption of new rules)	(AIR QUALITY)
I through III pertaining to)	
Major New Source Review)	
regulations)	

TO: All Concerned Persons

1. On _____, 2006, at _____.m., the Board of Environmental Review will hold a public hearing [in/at address], Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., _____, 2006, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

3. The rules proposed to be amended in subchapter 8 provide as follows, stricken matter interlined, new matter underlined:

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

(1) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with (1)(a) through (c), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limitation (PAL) under [NEW RULE I]. Instead, (3) and (38) shall apply for those purposes.

(a) ~~Actual~~ In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two-year~~ consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department ~~may determine that a different time period is~~ shall allow the use of a different time period upon determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) through (2)(c) remain the same.

(3) "Baseline actual emissions" means the rate of

emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with the following:

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable.

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (3)(a)(ii).

(b) For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under this subchapter, except that the 10-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include fugitive emissions to the extent quantifiable.

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the

requirements of ARM 17.8.906(11).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (3)(b)(ii) and (iii).

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero, and thereafter, for all other purposes, shall equal the unit's potential to emit.

(d) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (3)(a), for other existing emissions units in accordance with the procedures contained in (3)(b), and for a new emissions unit in accordance with the procedures contained in (3)(c).

(3) through (3)(b) remain the same, but are renumbered (4) through (4)(b).

~~(4)~~ (5) "Baseline concentration" means ~~that the~~ the ambient concentration level ~~which that~~ exists in the baseline area at the time of the applicable minor source baseline date.

(a) through (a)(ii) remain the same.

(b) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(i) actual emissions, as defined in (1), from any major stationary source on which construction commenced after the major source baseline date; and

(ii) actual emissions, as defined in (1), increases and decreases at any stationary source occurring after the minor source baseline date.

(5) through (7) remain the same, but are renumbered (6) through (8).

(9) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

(10) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy -- Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the environmental protection agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(8) through (10) remain the same, but are renumbered (11) through (13).

(14) "Continuous emissions monitoring system" (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this subchapter, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(15) "Continuous emissions rate monitoring system" (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(16) "Continuous parameter monitoring system" (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this subchapter, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

(17) "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

~~(11)~~ (18) "Emissions unit" means any part of a stationary source which that emits or would have the potential to emit any regulated NSR pollutant subject to regulation under the FCAA and includes an electric utility steam generating unit, as defined in (17). For purposes of this subchapter, there are two types of emissions units:-:

(a) a new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two years from the date such emissions unit first operated;

(b) an existing emissions unit is any emissions unit that does not meet the requirements in (18)(a).

(12) through (19) remain the same, but are renumbered (19) through (26).

(27) "Lowest achievable emission rate" (LAER) has the meaning given in ARM 17.8.901(18).

~~(20)~~ (28) "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emissions increase, as defined in (44), of any pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA a regulated NSR pollutant, as defined in (40), and a significant net emissions increase, as defined in (32) and (43), of that pollutant from the major stationary source.

(a) Any significant emissions increase, as defined in (44), from any emissions units or net emissions increase, as defined in (32), at a major stationary source that is significant for volatile organic compounds will shall be considered significant for ozone.

(b) through (vii) remain the same.

(viii) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) the state implementation plan; and

(B) other requirements necessary to attain and maintain the national ambient air quality standards (NAAQS) during the project and after it is terminated.

(ix) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, as defined in (41), provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(x) the reactivation of a very clean coal-fired electric utility steam generating unit.

(c) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under [NEW RULE I] for a PAL for that pollutant. Instead, the definition at [NEW RULE I(2)(h)] shall apply.

(21) through (23) remain the same, but are renumbered (29) through (31).

~~(24)~~ (32) The following apply to the definition of the term "net emissions increase":

(a) "net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) remains the same.

(ii) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subsection shall be determined as provided in (3), except that (3)(a)(iii) and (3)(b)(iv) shall not apply.

(b) and (c) remain the same.

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM 10 emissions may be used to evaluate the net emissions increase for PM 10.

(e) remains the same.

(f) A decrease in actual emissions is creditable only to the extent that:

(i) remains the same.

(ii) it is federally enforceable as a practical matter at and after the time that actual construction on the particular

change begins; and

(iii) and (g) remain the same.

(h) Subsection (1)(a) shall not apply for determining creditable emissions increases and decreases.

(33) "Pollution prevention" means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. It does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(25) remains the same, but is renumbered (34).

(35) "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(36) "Prevention of significant deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

(37) "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

(38) The following apply to the definition of the term "projected actual emissions":

(a) "projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

(b) in determining the projected actual emissions under (38)(a), the owner or operator of the major stationary source shall:

(i) consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the Montana air quality permit program;

(ii) include fugitive emissions to the extent quantifiable; and

(iii) exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under (3) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) in lieu of using the method set out in (38)(b)(i) through (iii), may elect to use the emissions unit's potential to emit, in tons per year, as defined in (34).

(39) "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(a) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;

(b) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

(c) is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

(d) is otherwise in compliance with the requirements of the FCAA.

(40) "Regulated NSR pollutant" means the following:

(a) any pollutant for which a Montana or a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants (e.g., volatile organic compounds are precursors for ozone);

(b) any pollutant that is subject to any standard promulgated under section 111 of the FCAA;

(c) any Class I or II substance subject to a standard promulgated under or established by title VI of the FCAA; or

(d) any pollutant that otherwise is subject to regulation under the FCAA, except that any or all hazardous air pollutants either listed in section 112 of the FCAA or added to the list pursuant to section 112(b)(2) of the FCAA, which have not been delisted pursuant to section 112(b)(3) of the FCAA, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the FCAA.

(41)(a) "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies:

(i) atmospheric or pressurized fluidized bed combustion;

(ii) integrated gasification combined cycle;

(iii) magnetohydrodynamics;

(iv) direct and indirect coal-fired turbines;

(v) integrated gasification fuel cells; or

(vi) as determined by the administrator, in consultation with the secretary of energy, a derivative of one or more of

these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(b) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the department of energy.

(c) The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this section and is granted an extension under section 409 of the FCAA.

~~(26)~~ (42) "Secondary emissions" means emissions ~~which that~~ would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification ~~which that~~ causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions ~~which that~~ come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

~~(27)~~ (43) The following apply to the definition of the term "significant":

(a) "significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

	<u>Pollutant and Emissions Rate</u>
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions 15 tpy of PM-10 emissions
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy
Fluorides:	3 tpy
Sulfuric acid mist:	7 tpy
Total reduced sulfur (including H ₂ S):	10 tpy
Reduced sulfur compounds (including H ₂ S):	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans):	3.2 * 10 ⁻⁶ megagrams per year (3.5 * 10 ⁻⁶ tpy)
Municipal waste combustor metals (measured as particulate matter):	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride):	36 megagrams per year (40 tpy)
Municipal solid waste landfill emissions (measured as non-	

methane organic compounds): 45 megagrams per year (50 tpy)

(b) "significant" means, in reference to a net emissions increase or the potential of a source to emit a ~~pollutant subject to regulation under the FCAA, that (27)(a) does not list any emissions rate regulated NSR pollutant, any emissions, for any pollutant not listed in (43)(a).~~ This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(c) Notwithstanding ~~(27)~~ (43)(a), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than one $\mu\text{g}/\text{m}^3$ (24-hour average).

(44) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant, as defined in (43), for that pollutant.

~~(28)~~ (45) "Stationary source" means any building, structure, facility, or installation which emits or may emit ~~any air pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA a~~ regulated NSR pollutant.

(46) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the Montana state implementation plan and other requirements necessary to attain and maintain the NAAQS during the project and after the project is terminated.

(29) remains the same, but is renumbered (47).

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS NEW SOURCE REVIEW PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY PERMITTING REQUIREMENTS--SOURCE APPLICABILITY AND EXEMPTIONS (1) ~~No major stationary source or major modification shall begin actual construction unless, as a minimum, requirements contained in ARM 17.8.819 through 17.8.827 have been met. A major stationary source or major modification exempted from the requirements of subchapter 7 under ARM 17.8.744 or 17.8.745 shall, if this subchapter is applicable, still be required to obtain a Montana air quality permit and comply with all applicable requirements of this subchapter.~~

(2) ~~The requirements contained in ARM 17.8.819 through 17.8.827 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the FCAA that it would emit, except as this subchapter would otherwise allow. This does not include hazardous air pollutants, except to the extent that such~~

~~hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA, or must be considered in the BACT analysis. The requirements of this subchapter are applicable as follows:~~

(a) the requirements of this subchapter apply to the construction of any new major stationary source, as defined in ARM 17.8.801(30), or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the FCAA;

(b) the requirements of ARM 17.8.819 through 17.8.827 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this subchapter otherwise provides;

(c) no new major stationary source or major modification to which the requirements of ARM 17.8.819 through 17.8.827 apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements;

(d) except as otherwise provided in ARM 17.8.818(2)(h), and consistent with the definition of major modification contained in ARM 17.8.801(28), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: a significant emissions increase, as defined in ARM 17.8.801(44), and a significant net emissions increase, as defined in ARM 17.8.801(32) and (43);

(i) the project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase;

(ii) the procedure for calculating, before beginning actual construction, whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (2)(e) through (h). The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in ARM 17.8.801(32). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase;

(e) under the actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions, as defined in ARM 17.8.801(38), and the baseline actual emissions, as defined in ARM 17.8.801(3), for each existing emissions unit, equals or exceeds the significant amount for that pollutant, as defined in ARM 17.8.801(43);

(f) under the actual-to-potential test for projects that only involve construction of a new emissions unit(s), a significant emissions increase of a regulated NSR pollutant is

projected to occur if the sum of the difference between the potential to emit, as defined in ARM 17.8.801(34), from each new emissions unit following completion of the project and the baseline actual emissions, as defined in ARM 17.8.801(3), of these units before the project equals or exceeds the significant amount for that pollutant, as defined in ARM 17.8.801(43);

(g) under the hybrid test for projects that involve multiple types of emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in ARM 17.8.818(2)(e) and (f), as applicable, with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant, as defined in ARM 17.8.801(43);

(h) for any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under [NEW RULE I].

(3) through (5) remain the same.

(6) The requirements contained in ARM 17.8.820, 17.8.822, and 17.8.824 as they relate to any maximum allowable increase for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each ~~pollutant subject to regulation under the FCAA~~ regulated NSR pollutant from the modification after the application of BACT would be less than 50 tons per year. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

(a) through (a)(viii) remain the same.

(ix) hydrogen sulfide -- 0.2 µg/m³, one-hour average; and

(ix) remains the same, but is renumbered (x).

(b) the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in (7)(a) ~~above~~; or

(c) the pollutant is not listed in (7)(a) ~~above~~.

(8) The requirements contained in ARM 17.8.820 do not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under the Montana air quality permit program before the provisions embodying the maximum allowable increase took effect as part of the state implementation plan and the department subsequently determined that the application as submitted before that date was complete.

(9) The requirements contained in ARM 17.8.820 shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM-10 if:

(a) the owner or operator of the source or modification submitted an application for a permit under the Montana air

quality permit program before the provisions embodying the maximum allowable increases for PM-10 took effect; and

(b) the department subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements of ARM 17.8.820 shall apply with respect to the maximum allowable increases for total suspended particulate (TSP) as in effect on the date the application was submitted.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.819 CONTROL TECHNOLOGY REVIEW (1) remains the same.

(2) A new major stationary source shall apply BACT for each ~~pollutant subject to regulation under the FCAA~~ regulated NSR pollutant that it would have the potential to emit in significant amounts, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA. In evaluating the environmental impacts of any control technology option, the BACT analysis shall consider all pollutants, including hazardous air pollutants.

(3) A major modification shall apply BACT for each ~~pollutant subject to regulation under the FCAA~~ regulated NSR pollutant for which it would be a significant net emissions increase at the source, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in section 108(a)(1) of the FCAA. In evaluating the environmental impacts of any control technology option, the BACT analysis shall consider all pollutants, including hazardous air pollutants. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.827 SOURCE OBLIGATION (1) and (2) remain the same.

(3) The following specific provisions apply to projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances where the project is determined, by the owner or operator, not to be part of a major modification and the owner or operator elects to use the method specified in ARM 17.8.801(38)(b)(i) through (iii) for calculating projected actual emissions:

(a) before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) a description of the project;

(ii) identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) a description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under ARM 17.8.801(38)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable;

(b) before beginning actual construction, the owner or operator shall provide a copy of the information set out in (3)(a) to the department. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction;

(c) the owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in (3)(a)(ii), and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit;

(d) the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under (3)(c) setting out the unit's annual emissions during the calendar year that preceded submission of the report;

(e) the report required in (3)(d) shall contain the following:

(i) the name, address and telephone number of the major stationary source;

(ii) the annual emissions as calculated pursuant to (3)(c); and

(iii) any other information that the owner or operator wishes to include in the report (e.g., if the emissions differ from the preconstruction projection, an explanation as to why the emissions differ from the preconstruction projection).

(4) The owner or operator of the source shall make the information required to be documented and maintained pursuant to (3) available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

4. Proposed new rule I, which will be placed in subchapter 8, provides as follows:

NEW RULE I PLANTWIDE APPLICABILITY LIMITATION (PAL)

(1) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in (1) through (16). The term "PAL" shall mean "actuals PAL" throughout this rule.

(a) Any physical change in, or change in the method of operation of, a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in (1) through (16), and complies with the PAL permit:

- (i) is not a major modification for the PAL pollutant;
- (ii) does not have to be approved through the department's major NSR permitting program; and
- (iii) is not subject to the provisions in ARM 17.8.827(2) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR permitting program).

(b) Except as provided under (1)(a)(iii), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) The definitions in (2)(a) through (k) shall apply for the purpose of developing and implementing regulations that authorize the use of actuals PALs consistent with this rule. When a term is not defined in this rule, it shall have the meaning given in ARM 17.8.801 or in the FCAA.

(a) "Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions, as defined in ARM 17.8.801(3), of all emissions units, as defined in ARM 17.8.801(18), at the source, that emit or have the potential to emit the PAL pollutant.

(b) "Allowable emissions" means allowable emissions, as defined in ARM 17.8.801(2), except as this definition is modified according to the following:

(i) the allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit;

(ii) an emissions unit's potential to emit shall be determined using the definition in ARM 17.8.801(34), except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(c) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in ARM 17.8.801(43), or in the FCAA, whichever is lower.

(d) "Major emissions unit" means:

(i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater

than the major source threshold for the PAL pollutant as defined by the FCAA for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the FCAA, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(e) "Plantwide applicability limitation" (PAL) means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule.

(f) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(g) "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

(h) "PAL major modification" means, notwithstanding the definitions of "major modification" and "net emissions increase" in ARM 17.8.801(28) and ARM 17.8.801(32), any physical change in, or change in the method of operation of, the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(i) "PAL permit" means the Montana air quality permit issued by the department that establishes a PAL for a major stationary source.

(j) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(k) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level, as defined in ARM 17.8.801(43), or in the FCAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit, as defined in (2)(d).

(3) As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

(a) a list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit;

(b) calculations of the baseline actual emissions, with supporting documentation; and

(c) the calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by (13)(a).

(4) The following provides general requirements for establishing PALs:

(a) The department may establish a PAL at a major

stationary source provided that, at a minimum, the following requirements are met:

(i) the PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(ii) the PAL shall be established in a PAL permit that meets the public participation requirements in (5);

(iii) the PAL permit shall contain all the requirements of (7);

(iv) the PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(v) each PAL shall regulate emissions of only one pollutant;

(vi) each PAL shall have a PAL effective period of 10 years;

(vii) the owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in (12) through (14) for each emissions unit under the PAL through the PAL effective period.

(b) At no time, during or after the PAL effective period, are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under ARM 17.8.906, unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) PALs for existing major stationary sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 51.161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

(6) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions, as defined in ARM 17.8.801(3), of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level of the PAL pollutant, as defined in ARM 17.8.801(43) or under the FCAA, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing

emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. The department shall specify a reduced PAL level(s) in tons per year in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit.

(7) The PAL permit shall contain, at a minimum, the following information:

(a) the PAL pollutant and the applicable source-wide emission limitation in tons per year;

(b) the PAL permit effective date and the expiration date of the PAL (PAL effective period);

(c) specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with (10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department;

(d) a requirement that emission calculations for the purposes of compliance with the PAL shall not include emissions from startups, shutdowns, and malfunctions. However, the source shall be required to report emissions from startups, shutdowns, and malfunctions;

(e) a requirement that, once the PAL expires, the major stationary source is subject to the requirements of (9);

(f) the calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by (3)(a);

(g) a requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under (13);

(h) a requirement to retain the records required under (13) on site. Such records may be retained in an electronic format;

(i) a requirement to submit the reports required under (14) by the required deadlines; and

(j) any other requirements that the department deems necessary to implement and enforce the PAL.

(8) The following establishes the PAL effective period and provides for reopening of the PAL permit:

(a) the department shall specify a PAL effective period of 10 years;

(b) during the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major

stationary source creates creditable emissions reductions for use as offsets under ARM 17.8.906; and

(iii) revise the PAL to reflect an increase in the PAL as provided under (11).

(c) the department has discretion to reopen the PAL permit for the following:

(i) reduce the PAL to reflect newly applicable federal requirements (for example, new source performance standards (NSPS)) with compliance dates after the PAL effective date;

(ii) reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major stationary source; and

(iii) reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a national ambient air quality standard (NAAQS) or PSD increment violation, or to an adverse impact on an air quality related value (AQRV) that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) except for the permit reopening in (8)(b)(i) for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of (5).

(9) Any PAL that is not renewed in accordance with the procedures in (10) shall expire at the end of the PAL effective period, and the requirements in (9)(a) through (e) shall apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(i) within the time frame specified for PAL renewals in (10)(b), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit, or each group of emissions units, if such a distribution is more appropriate as decided by the department, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under (10)(e), such distribution shall be made as if the PAL had been adjusted;

(ii) the department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(b) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(c) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under (9)(a)(ii), the

source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(d) Any physical change, or change in the method of operation, at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in ARM 17.8.801(28).

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to ARM 17.8.827(2), but were eliminated by the PAL in accordance with the provisions in (1)(a)(iii).

(10) For the purposes of this subchapter, a major stationary source PAL shall be renewed according to the following:

(a) The department shall follow the procedures specified in (5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain the following information:

- (i) the information required in (3)(a) through (c);
- (ii) a proposed PAL level;
- (iii) the sum of the potential to emit of all emissions units under the PAL (with supporting documentation); and
- (iv) any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in (10)(d)(i) and (ii). However, in no case may any such adjustment fail to comply with (10)(d)(iii).

(i) If the emissions level calculated in accordance with (6) is equal to or greater than 80% of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in (10)(d)(ii); or

(ii) the department may set the PAL at a level that it determines to be more representative of the source's baseline

actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(iii) notwithstanding (10)(d)(i) and (ii):

(A) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(B) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of (11) (increasing a PAL).

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions:

(a) the owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL;

(b) as part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply;

(c) the owner or operator obtains a major NSR permit for all emissions unit(s) identified in (11)(a), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL;

(d) the PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is

part of the PAL major modification becomes operational and begins to emit the PAL pollutant;

(e) the department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with (b)), plus the sum of the baseline actual emissions of the small emissions units;

(f) the PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of (5).

(12) Each PAL permit must contain enforceable requirements for a monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time.

(a) Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in (12)(e)(i) through (iv) and must be approved by the department.

(c) Notwithstanding (12)(b), the owner or operator may also employ an alternative monitoring approach that meets the requirements of this rule if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of this rule renders the PAL invalid.

(e) The following are acceptable (meet minimum performance requirements for approved monitoring approaches) general monitoring approaches when conducted in accordance with the minimum requirements in (12)(f) through (l):

(i) mass balance calculations for activities using coatings or solvents;

(ii) CEMS;

(iii) CPMS or PEMS; and

(iv) emission factors.

(f) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(ii) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(iii) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant

emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(g) An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, appendix B; and

(ii) CEMS must sample, analyze, and record data at least every fifteen minutes while the emissions unit is operating.

(h) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(ii) each CPMS or PEMS must sample, analyze, and record data at least every fifteen minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(i) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(i) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(ii) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(iii) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the department determines that testing is not required.

(j) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(k) Notwithstanding the requirements in (12)(f) through (j), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(i) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(ii) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(l) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically

valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

(13) Each PAL permit must contain enforceable recordkeeping requirements according to the following:

(a) the PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's twelve-month rolling total emissions, for five years from the date of such record;

(b) the PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus five years:

(i) a copy of the PAL permit application and any applications for revisions to the PAL; and

(ii) each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the applicable title V operating permit program. The reports shall meet the requirements in (14)(a) through (c).

(a) The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information:

(i) the identification of owner and operator and the permit number;

(ii) total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to (13)(a);

(iii) all data relied upon including, but not limited to, any quality assurance or quality control data in calculating the monthly and annual PAL pollutant emissions;

(iv) a list of any emissions units modified or added to the major stationary source during the preceding six-month period;

(v) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;

(vi) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (12)(j); and

(vii) a signed statement by the responsible official, as defined in ARM 17.8.1201(29), certifying the truth, accuracy, and completeness of the information provided in the report.

(b) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is

available. A report submitted pursuant to ARM 17.8.1212(3)(c) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by ARM 17.8.1212(3)(c). The reports shall contain the following information:

(i) the identification of owner and operator and the permit number;

(ii) the PAL requirement that experienced the deviation or that was exceeded;

(iii) emissions resulting from the deviation or the exceedance; and

(iv) a signed statement by the responsible official, as defined in ARM 17.8.1201(29), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

(15) The department may not issue a PAL that does not comply with the requirements of this rule.

(16) The department may supersede any PAL which was established prior to the date of approval of the plan by the administrator with a PAL that complies with the requirements of this rule.

(17) If any provision of this rule, or the application of such provision to any person or circumstance, is held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

5. The rules proposed to be amended in subchapter 9 provide as follows, stricken matter interlined, new matter underlined:

17.8.901 DEFINITIONS In this subchapter the following definitions apply:

(1) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit as determined in accordance with (1)(a) through (c), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under [NEW RULE II]. Instead, (3) and (29) shall apply for those purposes.

(a) ~~Actual~~ In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two-year~~ consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department ~~may determine~~ shall allow the use of a different time period upon a determination that a different time it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours,

MAR Notice No. 17-____

production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) ~~If the~~ The department ~~is unable to determine actual emissions consistent with (1)(a),~~ the department may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(c) through (2)(c) remain the same.

(3) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable;

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period;

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant;

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (3)(a)(ii).

(b) For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under this chapter, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include fugitive emissions to the extent quantifiable;

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently

comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of ARM 17.8.906(11);

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant;

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (3)(b)(ii) and (iii).

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero, and thereafter, for all other purposes, shall equal the unit's potential to emit.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (3)(a), for other existing emissions units in accordance with the procedures contained in (3)(b), and for a new emissions unit in accordance with the procedures contained in (3)(c).

(3) remains the same, but is renumbered (4).

(5) "Best available control technology" (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or

operation, and shall provide for compliance by means which achieve equivalent results.

(4) remains the same, but is renumbered (6).

(7) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(8) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy -- Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the environmental protection agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

(5) through (5)(b) remain the same, but are renumbered (9) through (9)(b).

~~(6)~~ (10) "Construction" means any physical change, or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit), which that would result in a change in actual emissions.

(11) "Continuous emissions monitoring system" (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this subchapter, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(12) "Continuous emissions rate monitoring system" (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(13) "Continuous parameter monitoring system" (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this subchapter, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

~~(7)~~ (14) "Emissions unit" means any part of a stationary source which that emits or would have the potential to emit any pollutant subject to regulation under the FCAA regulated NSR pollutant, as defined in (31), and includes an electric utility steam generating unit, as defined in ARM 17.8.801(17). For purposes of this subchapter, there are two types of emissions units:

(a) a new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two years from the date such emissions unit first operated; and

(b) an existing emissions unit is any emissions unit that does not meet the requirements in (14)(a).

(15) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

(8) and (9) remain the same, but are renumbered (16) and (17).

~~(10)~~ (18) "Lowest achievable emission rate" (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) and (b) remain the same.

~~(11)~~ (19) "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA a regulated NSR pollutant, as defined in (31), and a significant net emissions increase of that pollutant from the major stationary source.

~~(a) Any net emissions increase that is considered significant for volatile organic compounds is considered significant for ozone. Any significant emissions increase, as defined in (34), from any emissions units or net emissions increase, as defined in (22), at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.~~

(b) through (vi) remain the same.

(vii) any change in ownership at a stationary source-;

(viii) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) the Montana state implementation plan; and

(B) other requirements necessary to attain and maintain the national and Montana ambient air quality standard(s) during the project and after it is terminated.

(c) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under [NEW RULE III] for a PAL for that pollutant. Instead, the definition at [NEW RULE III(2)(h)] shall apply.

~~(12)~~ (20) The following apply to the definition of the term "major stationary source":

(a) "major stationary source" means:

(i) any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any ~~pollutant subject to regulation under the FCAA regulated NSR pollutant;~~ or

~~(ii) any stationary source of air pollutants located in a serious particulate matter (PM 10) nonattainment area which emits, or has the potential to emit, 70 tons per year or more of PM 10; or~~

~~(iii)~~ (ii) any physical change that would occur at a stationary source not qualifying under (20)(a)(i) or (ii) above as a major stationary source, if the change would constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

~~(b)~~ (c) The fugitive emissions of a stationary source ~~will~~ shall not be included in determining, for any of the purposes of this subchapter, whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) through (xxvii) remain the same.

(13) remains the same, but is renumbered (21).

~~(14)~~ (22) The following apply to the definition of the term "net emissions increase":

(a) "net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) ~~any the~~ increase in ~~actual~~ emissions from a particular physical change, or change in the method of operation, at a stationary source as calculated pursuant to ARM 17.8.904; and

(ii) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases shall be determined as provided in ARM 17.8.901(3), except that ARM 17.8.901(3)(a)(iii) and 17.8.901(3)(b)(iv) shall not apply.

(b) remains the same.

(c) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under ~~regulations approved pursuant to 40 CFR 51.165~~ this subchapter, which permit is in effect when the increase in actual emissions from the particular change occurs.

(d) remains the same.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) remains the same.

(ii) it is ~~federally~~ enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) the department has not relied on it in issuing any ~~Montana air quality~~ permit under regulations approved pursuant to 40 CFR Part 51, subpart I ~~(July 1, 1993 ed.)~~, or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(iv) and (f) remain the same.

(g) ARM 17.8.901(1)(a) shall not apply for determining creditable increases and decreases.

(23) "Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the administrator and incorporated into the state implementation plan to implement the requirements of this subchapter. Any permit issued under such a program is a major NSR permit.

(24) "Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to

recycling, treatment, or disposal. It does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(15) remains the same, but is renumbered (25).

(26) "Predictive emissions monitoring system" (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(27) "Prevention of significant deterioration (PSD) permit" means any permit that is issued under ARM Title 17, chapter 8, subchapter 8.

(28) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

(29) "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(a) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source shall:

(i) consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the Montana air quality permit program;

(ii) include fugitive emissions to the extent quantifiable; and

(iii) exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under (3) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) in lieu of using the method set out in (29)(a)(i) through (iii), may elect to use the emissions unit's potential to emit, in tons per year, as defined under (25).

(16) remains the same, but is renumbered (30).

(31) "Regulated NSR pollutant" means the following:

(a) nitrogen oxides or any volatile organic compounds;

(b) any pollutant for which a national ambient air quality standard has been promulgated; or

(c) any pollutant that is a constituent or precursor of a general pollutant listed under (31)(a) or (b), provided that a constituent or precursor pollutant may only be regulated under NSR as part of the regulation of the general pollutant.

(17) and (18) remain the same, but are renumbered (32) and (33).

(34) "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant, as defined in (33), for that pollutant.

(19) remains the same, but is renumbered (35).

(36) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the state implementation plan and other requirements necessary to attain and maintain the national and Montana ambient air quality standards during the project and after the project is terminated.

(20) remains the same, but is renumbered (37).

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.904 WHEN MONTANA AIR QUALITY PERMIT REQUIRED MAJOR STATIONARY SOURCE NEW SOURCE REVIEW NONATTAINMENT AREA PERMITTING REQUIREMENTS--SOURCE APPLICABILITY (1) Any new major stationary source or major modification which would locate anywhere in an area that is major for the pollutant for which the area is designated as non-attainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, obtain from the department a Montana air quality permit in accordance with subchapter 7 and all requirements contained in this subchapter if applicable under section 107(d)(1)(A)(i) of the FCAA, if the stationary source or modification would locate anywhere in the designated nonattainment area, shall, prior to construction, obtain from the department, a Montana air quality permit in accordance with ARM Title 17, chapter 8, subchapter 7, and all requirements contained in this subchapter, if applicable. A major stationary source or major modification exempted from the requirements of subchapter 7 under ARM 17.8.744 and 17.8.745 which would locate anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, still be required to obtain a Montana air quality permit and comply with the requirements of ARM 17.8.748, 17.8.749, 17.8.756, 17.8.759 and 17.8.760 and with all applicable requirements of this subchapter.

(a) Except as otherwise provided in (3) and (4), and consistent with the definition of major modification contained in ARM 17.8.901(19), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: a significant emissions increase, as defined in ARM

17.8.901(34), and a significant net emissions increase, as defined in ARM 17.8.901(22) and (33). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating, before beginning actual construction, whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (1)(c) through (f). The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in ARM 17.8.901(22). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) Under the actual-to-projected-actual applicability test for projects that only involve existing emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions, as defined in ARM 17.8.901(29), and the baseline actual emissions, as defined in ARM 17.8.901(3)(a) and (b), as applicable, for each existing emissions unit, equals or exceeds the significant amount for that pollutant, as defined in ARM 17.8.901(33).

(d) Under the actual-to-potential test for projects that only involve construction of a new emissions unit(s), a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit, as defined in ARM 17.8.901(25), from each new emissions unit following completion of the project and the baseline actual emissions, as defined in ARM 17.8.901(3)(c), of these units before the project equals or exceeds the significant amount for that pollutant, as defined in ARM 17.8.901(33).

(e) Under the hybrid test for projects that involve multiple types of emissions units, a significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in (1)(c) and (d) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant, as defined in ARM 17.8.901(33).

~~(2) Any source or modification located anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 which becomes a major stationary source or major modification for the pollutant for which the area is designated nonattainment solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation) shall obtain from the department a Montana air quality permit as though construction had not yet commenced on the source or modification, in~~

~~accordance with subchapter 7 and all requirements of this subchapter.~~ For any major stationary source for a PAL for a regulated MSR pollutant, the major stationary source shall comply with the requirements under [NEW RULE II].

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.905 ADDITIONAL CONDITIONS OF MONTANA AIR QUALITY PERMIT (1) The department shall not issue a Montana air quality permit required under ARM 17.8.904, unless the requirements of subchapter 7 and the following additional conditions are met:

(a) The permit for the new source or modification contains an emission limitation which constitutes the lowest achievable emissions rate (LAER) for such source.

(b) remains the same.

(c) The new source obtains from existing sources emission reductions (offsets), expressed in tons per year, which provide both a positive net air quality benefit in the affected area in accordance with ARM 17.8.906~~(7)~~ (8) through ~~(9)~~ (10), and a ratio of required emission offsets to the proposed source's emissions of 1:1 or greater. The emissions reductions (offsets) required under this subsection must be:

(i) obtained from existing sources in the same non-attainment area as the proposed source, except as specified in ARM 17.8.906~~(6)~~ (7) (whether or not they are under the same ownership);

(ii) through (4) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.906 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1) Pursuant to section ~~7503~~ 173 of the FCAA, emission offsets in nonattainment areas are required to be in the form of, and against, actual emissions. Actual emissions preceding the filing of the application to construct or modify a source are the baseline for determining credit for emission and air quality offsets, as determined in compliance with this subchapter.

(2) For sources and modifications subject to this subchapter, the baseline for determining credit for emissions reductions is the emissions limit under the Montana state implementation plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(a) the demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(b) the Montana state implementation plan does not contain

an emissions limitation for that source or source category.

~~(2)~~ (3) Where the emission limitation under the Montana state implementation plan allows greater emissions than the actual emissions potential to emit of the source, emissions offset credit will be allowed only for control below ~~the actual emissions~~ this potential.

~~(3)~~ (4) For an existing fuel combustion source, credit shall be based on the actual allowable emissions for the type of fuel being ~~burned~~ combusted at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offsets credit based on the allowable or actual emissions for the fuels involved is not acceptable, unless the Montana air quality permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department shall ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

~~(4)~~ (5) Emission reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the Montana state implementation plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this ~~(4)~~ subchapter, the department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current "existing" emissions the emissions from such previously shutdown or curtailed sources. Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source's air quality application is filed, or if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions described earlier in this ~~(4)~~ section are observed.

(5) through (12) remain the same, but are renumbered (6) through (13).

(14) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the FCAA shall be determined by summing the difference between the allowable emissions after the modification, as defined in ARM 17.8.901(2), and the actual emissions before the modification, as defined in ARM

17.8.901(1), for each emissions unit.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

6. Proposed new rules II and III, which will be placed in subchapter 9, provide as follows:

NEW RULE II SOURCE OBLIGATION (1) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(2) Any source or modification located anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 which becomes a major stationary source or major modification for the pollutant for which the area is designated nonattainment solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation) shall obtain from the department a Montana air quality permit as though construction had not yet commenced on the source or modification, in accordance with subchapter 7 and all requirements of this subchapter.

(3) The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where the project is determined, by the owner or operator, not to be part of a major modification and the owner or operator elects to use the method specified in ARM 17.8.901(29)(a)(i) through (iii) for calculating projected actual emissions.

(4) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) a description of the project;

(b) identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under ARM 17.8.901(29)(a)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(5) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in (4) to the department. Nothing in this section shall be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(6) The owner or operator shall monitor the emissions of

any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in (4)(b), and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(7) The owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under (6) setting out the unit's annual emissions during the year that preceded submission of the report.

(8) The report required in (7) shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to (6); and

(c) any other information that the owner or operator wishes to include in the report (e.g., if the emissions differ from the preconstruction projection, an explanation as to why the emissions differ from the preconstruction projection).

(9) The owner or operator of the source shall make the information required to be documented and maintained pursuant to this rule available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(10) If any provision of this rule, or the application of such provision to any person or circumstance, is held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

NEW RULE III PLANTWIDE APPLICABILITY LIMITATION (PAL)

(1) The department may approve the use of an actuals PAL for any existing major stationary source, except as provided in (a), if the PAL meets the requirements in (1) through (16). The term "PAL" shall mean "actuals PAL" throughout this rule.

(a) The department shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(b) Any physical change in, or change in the method of operation of, a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in (1) through (16), and complies with the PAL permit:

(i) is not a major modification for the PAL pollutant;

(ii) does not have to be approved through the department's nonattainment major NSR program; and

(iii) is not subject to the provisions in ARM 17.8.904(2) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

(c) Except as provided under (1)(b)(iii), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) The following definitions shall apply for the purpose of implementing this rule. When a term is not defined in this rule, it shall have the meaning given in ARM 17.8.901 or in the FCAA.

(a) "Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions, as defined in ARM 17.8.901(3), of all emissions units, as defined in ARM 17.8.901(14), at the source, that emit or have the potential to emit the PAL pollutant;

(b) "Allowable emissions" means allowable emissions as defined in ARM 17.8.901(2), except as this definition is modified according to the following:

(i) the allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit;

(ii) an emissions unit's potential to emit shall be determined using the definition in ARM 17.8.901(25), except that the words "or enforceable as a practical matter" should be added after "federally enforceable;"

(c) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in ARM 17.8.901(33), or in the FCAA, whichever is lower;

(d) "Major emissions unit" means:

(i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined in the FCAA for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the FCAA, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year;

(e) "Plantwide applicability limitation" (PAL) means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this rule;

(f) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of

the PAL major modification becomes operational and begins to emit the PAL pollutant;

(g) "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later;

(h) "PAL major modification" means, notwithstanding the definitions of "major modification" and "net emissions increase" in ARM 17.8.901(19) and (22), any physical change in, or change in the method of operation of, the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL;

(i) "PAL permit" means the major NSR permit, the minor NSR permit, or the state operating permit under a program that is approved into the state implementation plan, or the title V permit issued by the department that establishes a PAL for a major stationary source;

(j) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source;

(k) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level, as defined in ARM 17.8.901(33) or in the FCAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit, as defined in (2)(d).

(3) As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

(a) a list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit;

(b) calculations of the baseline actual emissions, with supporting documentation; and

(c) the calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by (13)(a).

(4) The following provides general requirements for establishing PALs:

(a) The department may establish a PAL at a major stationary source, provided that, at a minimum, the following requirements are met:

(i) the PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that

the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(ii) the PAL shall be established in a PAL permit that meets the public participation requirements in (5);

(iii) the PAL permit shall contain all the requirements of (7);

(iv) the PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(v) each PAL shall regulate emissions of only one pollutant;

(vi) each PAL shall have a PAL effective period of 10 years;

(vii) the owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in (12) through (14) for each emissions unit under the PAL through the PAL effective period.

(b) At no time, during or after the PAL effective period, are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under ARM 17.8.906 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

(6) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions, as defined in ARM 17.8.901(3), of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level of the PAL pollutant, as defined in ARM 17.8.901(33) or under the FCAA, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. The department shall specify a reduced PAL level(s) in tons per year in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required

to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(7) The PAL permit shall contain, at a minimum, the following information:

(a) the PAL pollutant and the applicable source-wide emission limitation in tons per year;

(b) the PAL permit effective date and the expiration date of the PAL (PAL effective period);

(c) specification in the PAL permit that, if a major stationary source owner or operator applies to renew a PAL in accordance with (10) before the end of the PAL effective period, the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department;

(d) a requirement that emission calculations for the purposes of compliance with the PAL shall not include emissions from startups, shutdowns, and malfunctions. However, the source shall be required to report emissions from startups, shutdowns, and malfunctions;

(e) a requirement that, once the PAL expires, the major stationary source is subject to the requirements of (9);

(f) the calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by (13)(a);

(g) a requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under (12);

(h) a requirement to retain the records required under (13) on site. Such records may be retained in an electronic format;

(i) a requirement to submit the reports required under (14) by the required deadlines; and

(j) any other requirements that the department deems necessary to implement and enforce the PAL.

(8) The following establishes the PAL effective period and provides for reopening of the PAL permit:

(a) the department shall specify a PAL effective period of 10 years;

(b) during the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under ARM 17.8.906;

(iii) revise the PAL to reflect an increase in the PAL as provided under (11);

(c) the department has discretion to reopen the PAL permit for the following:

(i) reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major stationary source under the state implementation plan; or

(iii) reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public;

(d) Except for the permit reopening in (8)(b)(i) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of (5).

(9) Any PAL that is not renewed in accordance with the procedures in (10) shall expire at the end of the PAL effective period, and the requirements in (9)(a) through (e) shall apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

(i) within the time frame specified for PAL renewals in (10)(b), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit, or each group of emissions units, if such a distribution is more appropriate as decided by the department, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under (10)(e), such distribution shall be made as if the PAL had been adjusted;

(ii) the department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(b) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(c) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under (9)(a)(i), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(d) Any physical change, or change in the method of operation, at the major stationary source will be subject to the

nonattainment major NSR requirements if such change meets the definition of major modification in ARM 17.8.901(19).

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to [NEW RULE II(2)], but were eliminated by the PAL in accordance with the provisions in (1)(b)(iii).

(10) For the purposes of this subchapter, a major stationary source PAL shall be renewed according to the following:

(a) The department shall follow the procedures specified in (5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(b) A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued;

(c) The application to renew a PAL permit shall contain the following information:

- (i) the information required in (3)(a) through (c);
- (ii) a proposed PAL level;
- (iii) the sum of the potential to emit of all emissions units under the PAL (with supporting documentation); and
- (iv) any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL;

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in (10)(d)(i) and (ii). However, in no case may any such adjustment fail to comply with (10)(d)(iii).

(i) If the emissions level calculated in accordance with (6) is equal to or greater than 80% of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in (10)(d)(ii); or

(ii) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other

factors as specifically identified by the department in its written rationale.

(iii) Notwithstanding (10)(d)(i) and (ii):

(A) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(B) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of (11) (increasing a PAL).

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions:

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major NSR permit for all emissions unit(s) identified in (11)(a), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(e) The department shall calculate the new PAL as the sum

of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with (11)(b)), plus the sum of the baseline actual emissions of the small emissions units.

(f) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of (5).

(12) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time.

(a) Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in (12)(e)(i) through (iv) and must be approved by the department.

(c) Notwithstanding (12)(b), the owner or operator may also employ an alternative monitoring approach that meets the requirements of this rule if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(e) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in (12)(f) through (l):

(i) mass balance calculations for activities using coatings or solvents;

(ii) CEMS;

(iii) CPMS or PEMS; and

(iv) emission factors.

(f) An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(ii) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(iii) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(g) An owner or operator using CEMS to monitor PAL

pollutant emissions shall meet the following requirements:

- (i) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, appendix B; and

- (ii) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(h) An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

- (i) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

- (ii) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(i) An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

- (i) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

- (ii) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

- (iii) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the department determines that testing is not required.

(j) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(k) Notwithstanding the requirements in (12)(f) through (j), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

- (i) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

- (ii) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(l) All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

(13) Each PAL permit must contain enforceable recordkeeping requirements according to the following:

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this rule and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

(i) a copy of the PAL permit application and any applications for revisions to the PAL; and

(ii) each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the applicable title V operating permit program. The reports shall meet the requirements in (14)(a) through (c).

(a) The semiannual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information:

(i) the identification of the owner and operator and the permit number;

(ii) total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to (13)(a);

(iii) all data relied upon including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

(iv) a list of any emissions units modified or added to the major stationary source during the preceding six-month period;

(v) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;

(vi) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (12)(j); and

(vii) a signed statement by the responsible official, as defined by ARM 17.8.1201(29), certifying the truth, accuracy, and completeness of the information provided in the report.

(b) The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to ARM 17.8.1212(3)(c) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by ARM 17.8.1212(3)(b). The reports shall contain the following

information:

(i) the identification of owner and operator and the permit number;

(ii) the PAL requirement that experienced the deviation or that was exceeded;

(iii) emissions resulting from the deviation or the exceedance; and

(iv) a signed statement by the responsible official, as defined by ARM 17.8.1201(29), certifying the truth, accuracy, and completeness of the information provided in the report.

(c) The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

(15) The department may not issue a PAL that does not comply with the requirements in this rule.

(16) The department may supersede any PAL which was established prior to the date of approval of the plan by the administrator with a PAL that complies with the requirements of this rule.

(17) If any provision of this rule, or the application of such provision to any person or circumstance, is held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: On December 31, 2002, the U.S. Environmental Protection Agency (EPA) adopted amendments to its Major New Source Review (NSR) regulations, concerning modifications that may be made to existing facilities without triggering NSR ("NSR Reform Rules"). The amendments were challenged in federal court, and the United States Court of Appeals for the District of Columbia issued a decision on June 24, 2005, in which the court denied some of the petitioners' claims, vacated provisions of the regulations concerning a Clean Unit applicability test and Pollution Control Projects (PCP), and remanded certain recordkeeping provisions for an acceptable explanation or adoption of an appropriate supported alternative. The Board is proposing to amend the State's NSR rules in ARM Title 17, Chapter 8, Subchapters 8 and 9, and adopt new rules, to include the provisions of EPA's NSR amendments that were upheld by the court.

The NSR program, as currently administered, could impede, or result in the cancellation of, projects that would maintain or improve the reliability, efficiency and/or safety of existing power plants and refineries. Further, for existing industrial facilities outside the energy sector, the present NSR program may discourage projects that improve capacity or efficiency but do not increase emissions. Instead of being a tool to help improve air quality, the NSR program may stand in the way of making environmental improvements at facilities.

The NSR Reform rules would allow sources to respond to

rapidly changing markets by offering facilities greater flexibility to improve and modernize their operations in ways that may reduce energy use and air pollution, provide incentives to install state-of-the-art pollution controls, and provide more accurate means to calculate actual emissions of air pollutants. These improvements also would remove unintended regulatory barriers to investments in energy efficiency and pollution control projects, while preserving the environmental benefits of the NSR program.

The NSR Reform rules would allow for: use of past actual emissions (baseline actual emissions) and projected future actual emissions (including recordkeeping and reporting requirements), rather than potential emissions, in measuring emissions increases from a proposed project (the facility may still use potential emissions); use of a ten-year look-back period in selecting a 24-month baseline period (chosen by the facility) used for measuring past actual emissions; and use of a five-year look-back period (chosen by the facility) for electric utilities. The proposed NSR Reform rules also would: abandon the present provision authorizing use of source-specific allowable emissions in measuring baseline emissions; exclude increases due to unrelated demand growth from the measurement of projected future actual emissions; and establish a Plantwide Applicability Limitation ("PAL") program allowing facilities to establish a cap on emissions and trade increases and decreases under the cap, without installing controls on new or modified emissions units, if the modifications do not cause emissions to violate the plantwide cap.

In order to maintain primacy over the state's NSR program, it is necessary for the Board to adopt rules that are at least as stringent as the federal NSR Reform rules. Therefore, the Board is proposing adoption of the December 31, 2002, federal NSR Reform rules, as amended by the June 24, 2005, court decision (vacating Clean Unit and PCP provisions) with the following minor differences:

The Montana NSR Reform rules would include recordkeeping and reporting requirements for all projects using the actual to projected actual applicability test to avoid major NSR. The December 31, 2002, final NSR Reform rules provided that only projects using the actual to projected actual applicability test to avoid major NSR and posing a "reasonable possibility" of exceeding the applicable significant emissions level must monitor and report actual emissions, as they relate to projected actual emissions, to the permitting authority. The D.C. Court of Appeals found that EPA acted arbitrarily and capriciously in determining that sources making changes need not keep records of their emissions if they see no "reasonable possibility" that these changes constitute modifications for NSR purposes. In the Court's opinion, EPA failed to provide a reasoned explanation for how, absent such records, it can ensure compliance with NSR.

In addition, the Montana NSR Reform rules would remove the federal NSR Reform rules requirement for inclusion of startup, shutdown, and malfunction (SSM) emissions from both the baseline actual emissions and the projected actual emissions calculations

used to determine major modification applicability. Including SSM emissions would benefit the source in establishing the baseline actual emissions (i.e. inflates pre-change emissions) but would be disadvantageous to the source when establishing the projected actual emissions. The baseline actual emissions would be inflated by SSM emissions, while the projected actual emissions likely would remain low. Further, it is unlikely that a source would have adequate information to estimate future SSM emissions, and the source may underestimate SSM emissions to lower future emissions estimates, thereby, potentially avoiding major NSR.

Finally, based on Department analysis of recent and historic Montana major NSR permitting actions, the Department determined that adoption of the NSR reform rules likely would result in relatively little actual impact to major NSR program applicability. The Department receives fewer than five major NSR permit applications per year. Further, most major NSR permit actions reviewed by the Department greatly exceed applicable emission thresholds; therefore, most major NSR actions will not avoid major NSR review through the implementation of changes under NSR Reform.

The Board is also proposing minor editorial revisions in the subchapter 8 and 9 rules that are not intended to change the meaning of the rules.

7. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., _____, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

8. _____, attorney for the Board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

9. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board

Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

_____	BY:	_____
DAVID M. RUSOFF		JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer		Chairman

Certified to the Secretary of State_____, 2005.